



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL, MNDL-S

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage to the rental unit; damages or loss under the Act, regulations, or tenancy agreement; and, authorization to retain the tenant's security deposit, as amended.

The landlord appeared for the hearing and provided affirmed testimony. There was no appearance on part of the tenant. Since the tenant did not appear, I explored service of the hearing materials upon the tenant.

The landlord testified that she served the original proceeding package upon the tenant, in person, while the tenant was still residing at the rental unit in December 2020 and within three days of receiving the proceeding package.

The tenant vacated the rental unit on January 1, 2021 and on January 28, 2021 the landlord attempted to serve the tenant with an Amendment to an Application for Dispute Resolution and evidence, including a USB stick, in person at her new residence but the landlord was unsuccessful in serving the tenant personally so the package was posted to the door of the tenant's new residence. The landlord had a photograph of the package being delivered to the tenant's residence on January 28, 2021 and a statement from a witness. The landlord subsequently contacted the tenant to confirm the tenant could see/hear the content on the USB stick and the tenant confirmed, via email, that she could.

On February 1, 2021 the Residential Tenancy Branch received evidence from the tenant, consisting largely of photographs and statements concerning an additional occupant.

On March 5, 2021 the landlord sent the Amendment and evidence to the tenant via registered mail; however, the landlord did not send a USB stick in the mailed package. Rather, the landlord printed the photographs but did not otherwise serve the video evidence again. The landlord provided registered mail receipts as proof of service and a search of the registered mail tracking numbers showed Canada Post left notice cards on March 6, 2021 and March 11, 2021 and the package was successfully picked upon March 19, 2021.

Given the above, I find I am satisfied the tenant was served with the original proceeding package in December 2020 and the evidence on or about January 28, 2021 since the tenant had the access code to upload rebuttal evidence on February 1, 2021. As for the Amendment, an Amendment for a monetary claim is to be served in person or by registered mail. The Amendment was served by registered mail sent on March 5, 2021 and I find I am satisfied the Amendment was sufficiently served upon the tenant. Therefore, I proceeded to hear the landlord's claims against the tenant, as amended, even though the tenant did not appear for the hearing and I admitted the landlord's photographic, videos and documentary evidence.

As for consideration of the tenant's evidence, in keeping with Rules 3.16 and 7.4, I have not given it further consideration in making a determination as to the landlord's entitlement to receive compensation from the tenant as the tenant did not prove she served the landlord with her evidence in accordance with the Act and Rules of Procedure; and, the tenant did not appear at the hearing to present her evidence. Rules 3.16 and 7.4 provide as follows:

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Issue(s) to be Decided

1. Is the landlord entitled to compensation from the tenant, as amended?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement for a fixed term tenancy set to commence on October 11, 2020 and expire on April 30, 2021. The tenant paid a security deposit of \$350.00 and was required to pay rent of \$700.00 on the first day of every month. The tenancy ended on January 1, 2021 pursuant to an executed Mutual Agreement to End Tenancy.

The landlord did not prepare a move-in or a move-out inspection report. Rather, the landlord took photographs of the rental unit approximately 48 hours after the tenancy ended.

The landlord described the rental unit as furnished studio style accommodation on the ground level of a home, complete with a bathroom, mini-kitchen, television, bed and linens. The landlord stated that prior to the tenancy the landlord had rented the unit out as short term vacation accommodation. After the tenancy ended the landlord did not re-rent the unit and has yet to make repairs. The landlord intends to hold the unit vacant until it is appropriate to rent it out as short term vacation accommodation again given the COVID-19 pandemic.

Below, I have summarized the landlord's claims against the tenant, as amended:

<u>Description</u>	<u>Amount</u>	<u>Reason</u>
Damaged laminate flooring	\$3017.78	<p>The tenant caused the floor in the main living area to become saturated with moisture, causing the floor to lift and buckle. Also, the laminate floor in the bathroom, by the toilet, is stained and cannot be removed.</p> <p>The landlord obtained a written quote for laminate floor replacement. The landlord</p>

		testified that the floor was approximately 3 years old.
Baseboards (other items contained on quote for “renos” were withdrawn by landlord during hearing)	\$780.00 + gst = \$819.00	<p>The baseboard suffered water damage from what appears to be tenant overwatering a plant sitting on the ledge above. Also, the floor and trim need to be removed and replaced to facilitate floor replacement.</p> <p>The landlord obtained a written estimate. The landlord submitted that the baseboards and trim were approximately 3 years old.</p>
Cleaning	\$150.00	<p>The tenant left rental unit filthy. It took the cleaners 5 hours to clean the unit at the end of the tenancy when it ordinarily takes 1 hour between guests.</p> <p>The landlord provided evidence from the cleaner including a receipt and statement written by the cleaner.</p>
Damaged television	\$219.00	<p>The tenant caused a burn hole in television, likely from a candle burning near the tv.</p> <p>The landlord obtained a print-out of the cost of a replacement tv. The landlord estimated the tv was approximately 3 years old and the landlord estimates that a tv is expected to last 5 years approximately.</p>
Mouldy box spring	\$459.99	<p>Box spring covered in mould due to water damage from the tenant overwatering the plant located on ledge above.</p> <p>The landlord submitted the box spring was 3 years old and estimated useful life of box spring is 10 years.</p>

Stained and damaged bed skirt, pillows, duvet insert, mattress protector, curtains, throw blanket, sheets, duvet cover, and towels	\$49.52 + \$36.99 + \$199.99 + \$39.99 + \$134.64 + \$31.99 + \$231.95 = \$725.07	The linens were stained and damaged at end of tenancy. The landlord submits these items were fairly new at start of tenancy and the landlord typically replaces these items once per year.
Rent (Landlord withdrew this claim during the hearing)	Nil	
Total claim, as amended	\$5,390.84	

In support of the landlord's claims, the landlord provided several photographs, videos, statements of the cleaners, quotes, receipts, and print-outs from the internet showing the cost to replace damaged items.

Other evidence included a copy of the tenancy agreement and proof of service with respect to serving the proceeding documents and evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and

37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 37 also requires that a tenant leave a rental unit “reasonably clean” at the end of the tenancy. Where a tenant stains an item so that it is beyond cleaning or it cannot be cleaned, the soiled item may be considered damaged.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Upon consideration of all of the landlord’s evidence, including testimony, photographs, video, receipts, estimates, quotations, and statements of the cleaner, I provide the following findings and reasons.

Floor damage

The landlord provided evidence showing the floor is lifted and buckling in the main area of the rental unit, most likely from water or some other liquid being permitted to sit on the laminate floor, and a few stains by the toilet, and I accept that this damage occurred during the tenancy based on the landlord’s evidence.

The landlord requests that the tenant be liable for the full replacement cost of new laminate flooring; however, I find that request unreasonable since it does not take into account depreciation of the existing flooring from three years of use. Also, laminate is not generally a suitable material for installation in bathrooms given the high moisture content in bathrooms and I am of the view the laminate in the bathroom would have a much shorter life span. Therefore, I limit the landlord’s recovery to 50% of the cost to replace the flooring for an award of \$1508.89 [\$3017.78 x 50%].

Baseboards and trim

Upon review of the written estimate I note that it states the baseboards and trim require removal and replacement to facilitate the floor replacement. I have awarded the landlord recovery of 50% of the floor replacement and I find it appropriate to award the landlord 50% of the cost to remove and reinstall the baseboards. Therefore, I limit the landlord's award to \$409.50 [$\$819.00 \times 50\%$].

Cleaning

The photographic and video landlord's evidence shows a very dirty kitchen and bathroom area, along with other somewhat dirty areas elsewhere in the rental unit. From the cleaner's statements, it is clear that the landlord expects an exceptional level of cleanliness and a tenant is not required to leave a rental unit that clean at the end of a tenancy. Rather, section 37 of the Act only requires the tenant to leave a rental unit "reasonably clean" at the end of the tenancy and if a landlord expends additional monies to bring it to a higher level of cleanliness that is at the landlord's expense. Therefore, I estimate the tenant's portion of the cleaning expense to be 4 hours at \$30.00 per hour, or \$120.00 for cleaning.

Television

I accept the evidence before me that the television was damaged by a burn during the tenancy and I hold the tenant liable for this damage. Having heard the television was three years old and the landlord expects a television to last five years, I hold the tenant liable to compensate the landlord for the depreciated value of the television which I calculate to be \$87.60 [$\$219.00 \times 2/5$ years].

Box spring

I accept the photographic evidence and the landlord's testimony that the box spring became mouldy during the tenancy due to the tenant's neglect in allowing excessive moisture to accumulate behind and around the box spring and not wiping it up in a timely manner. Therefore, I hold the tenant liable for the depreciated value of the box spring.

The landlord estimated a useful life of 10 years for a box spring and I find that is consistent with policy guideline 40 for "furniture". Given the box spring was

approximately three years old already, I limit the landlord's award to the depreciated value of \$321.99 [$\$459.99 \times 7/10$ years].

Linens

Upon review of the photographs, I accept the linens were badly stained or otherwise damaged during the tenancy and I hold the tenant liable for this damage. Given the landlord expects to replace linens once a year, and the tenancy was three months in duration, and the linens were "fairly new" at the start of the tenancy, I limit the landlord's award to 50% of the amount claimed or \$362.54 [$\$725.07 \times 50\%$].

Filing fee, security deposit and Monetary Order

The landlord's claim had merit and I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's \$350.00 security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of my findings and awards as set out above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Damaged flooring	\$1508.89
Baseboards and trim	409.50
Cleaning	120.00
Television	87.60
Box spring	321.99
Linens	362.54
Filing fee	100.00
Less: security deposit	<u>(350.00)</u>
Monetary Order for landlord	\$2560.52

Conclusion

The landlord is authorized to retain the tenant's security deposit and the landlord is provided a Monetary Order for the balance owing of \$2560.52 to serve and enforce upon the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 07, 2021

Residential Tenancy Branch